

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

STEPHEN EARL BROOKS,)
Plaintiff,)
v.) No. 3:10-CV-291
JUDGE BILL SWANN, et al.,) (Phillips)
Defendants.)

MEMORANDUM OPINION

On July 20, 2010, the Honorable C. Clifford Shirley, Jr., filed a Report and Recommendation (R&R) [Doc. 3] in which he recommended that plaintiff's complaint be dismissed under 28 U.S.C. § 1915, as frivolous, for failure to specify the basis for the district court's subject matter jurisdiction.

This matter is presently before the court on plaintiff's objections to the R&R [Doc. 5]. As required by 28 U.S.C. § 636(b)(1), the court has now undertaken a *de novo* review of those portions of the R&R to which plaintiff objects. After a review of the pleadings in this case, the court finds itself in agreement with Magistrate Judge Shirley that plaintiff's complaint fails to state any legally cognizable claim under the Constitution, laws or treaties of the United States. The plaintiff's complaint fails to state any violation of any federal rights or violation of any Constitutional rights, which is required for jurisdiction under

28 U.S.C. § 1331. Further, the complaint fails to establish that the parties are citizens of different states or that the amount in controversy exceeds \$75,000, which is required for diversity jurisdiction under 28 U.S.C. § 1332. Consequently, plaintiff's objections will be overruled, the R&R will be accepted in whole, and this action will be dismissed.

For the foregoing reasons, as well as the reasons articulated by Magistrate Judge Shirley in his R&R, plaintiff's objections to the R&R [Doc. 5] are hereby **OVERRULED** in their entirety whereby the R&R [Doc. 3] is **ACCEPTED IN WHOLE**. Accordingly, this action is **DISMISSED**, but without prejudice to the plaintiff's rights to refile in an appropriate state court.

ENTER:

s/ Thomas W. Phillips
United States District Judge